

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION



EMPLOYEE GRIEVANCE PROCEDURES

Revised: 07/01/2014
Effective: 12/01/2013

OBJECTIVE AND SCOPE

In establishing the North Carolina Department of Transportation Employee Grievance Procedures, hereinafter referred to as NCDOT Procedures, the North Carolina Department of Transportation, Human Resources Office, seeks to establish the following objectives:

- Ensure employees have access to internal grievance procedures to address grievable issues timely, fairly and without fear of reprisal; and
- Resolve workplace issues efficiently and effectively.

The NCDOT Procedures are not independent of the Office of State Human Resources Employee Grievance Policy, hereinafter referred to as OSHR Policy, and it is not intended to serve as a substitution for the OSHR Policy. **It is advised to cross reference, review and comply with both the OSHR Policy and the NCDOT Procedures.** The OSHR Policy and the NCDOT Procedures are located on the NCDOT portal and may be accessed by typing “employee grievance” in the search field.

Any supervisor or staff member issuing threats of reprisal or intimidation because an employee exercised his right to file a grievance shall be subject to disciplinary action for unacceptable personal conduct.

DEFINITIONS, GRIEVABLE ISSUES AND WHO MAY FILE A GRIEVANCE

Advisory Note: Refer to OSHR Policy, Section 7, Definitions, Grievable Issues and Who May Grieve, pages 26 – 30.

GRIEVANCE PROCESS FOR ALL GRIEVABLE ISSUES

In computing prescribed time periods for filing, the day of the action or event that is the basis for the grievance is “day zero” of the filing period. The following calendar day is “day 1” and the last day of the prescribed time period is included. If the last day falls on a Saturday, Sunday or a legal holiday observed by the State, the deadline for filing is extended until the end of the next business day.

A formal internal grievance and any subsequent documents regarding this process, hereinafter in this section referred to as documents, must be filed in writing by one of the following methods of delivery:

1. **Mail** – If the formal internal grievance (Step 1) document is filed by mail, the envelope in which the document is mailed must be postmarked on or before the 15th calendar day from the date of the action or the event that is the basis of the grievance. The Step 2 appeal must be postmarked on or before the 5th calendar day following the mediation. For the purpose of this procedure, mail is defined as a document that is filed and delivered by US Postal Service, UPS, Fed Ex or other similar type delivery service.

The document may be mailed to the mailing address or physical address below:

Mailing Address:

NCDOT HR Services
1519 MSC
Raleigh NC 27699-1519

Physical Address:

NCDOT HR Services
313 Chapanoke Rd., Ste. 201
Raleigh, NC 27603

2. **E-mail** – If the formal internal grievance (Step 1) is filed by e-mail, the sent date displayed on the e-mail from complainant must adhere to the applicable filing deadline. If the Step 2 appeal is filed by email, the sent date displayed on the email from the grievant must be sent by the applicable deadline following mediation.

The document may be e-mailed and adhere to the applicable deadline to the e-mail address below:

E-mail Address:

grievances@ncdot.gov

3. **Fax** – If a document is filed by fax, the sent date displayed on the fax must adhere to the applicable deadline.

The Human Resources, Employee Relations fax number is below:

Fax Number:

919-662-4324

- 4. Hand Delivery** – If the document is hand delivered, the date of delivery must adhere to the applicable deadline.

Advisory Note: Refer to the OSHR Policy, Section 7, Grievance Process for All Grievance Issues, page 31.

EEO INFORMAL INQUIRY FOR UNLAWFUL DISCRIMINATION, HARASSMENT OR RETALIATION

An employee alleging unlawful discrimination, harassment or retaliation must first file an EEO Informal Inquiry complaint within **15 calendar days** of the alleged act of discrimination, harassment or retaliation with the EEO Manager. If the employee alleges facts that would constitute unlawful discrimination, harassment or retaliation, the complaint will be investigated as part of the EEO Informal Inquiry.

The complaint must be filed in writing and use one of the following methods of delivery:

- A. Mail** - The complaint may be mailed to the mailing address or physical address below and must adhere to the applicable deadline:

Mailing Address:

NCDOT EO Workforce Services
1511 MSC
Raleigh NC 27699-1511

Physical Address:

NCDOT EO Workforce Services
104 Fayetteville Street Mall
Raleigh, NC 27601

- B. E-Mail** - The complaint may be e-mailed to jtrawley@ncdot.gov and the date emailed must adhere to the applicable deadline.
- C. Fax** – The complaint may be faxed to (919)- 508- 1814 and the date of the fax must adhere to the applicable deadline.
- D. Hand Delivery** – The complaint may be hand delivered to the EO Workforce Service Office and the date of delivery must adhere to the applicable deadline.

If the complaint is timely filed and the employee alleges facts that would constitute unlawful discrimination, harassment or retaliation, the following next steps occur:

1. The complaint is assigned by the EEO Manager to an EEO Specialist for investigation.
2. EEO Specialist contacts the employee to confirm receipt of the complaint, seeks clarification of the complaint and informs employee of the grievance process.
3. EEO Specialist sends a notification letter informing the appropriate management chain of command of the filing and attaches a copy of the EEO Informal Intake form and complaint.
4. EEO Specialist initiates an investigation not to exceed **45 calendar days** unless an extension is mutually agreed upon between management and the employee, but not to exceed 15 calendar days.
5. EEO Specialist at the conclusion of the investigation prepares a final investigative report and submits it to the EEO Manager for review and concurrence.
6. Upon concurrence by the EEO Manager, the EEO Specialist communicates the outcome of the investigation in writing to the employee.
7. EEO Specialist contacts the appropriate management chain of command of the outcome of the investigation.

If the outcome of the investigation indicates reasonable cause to believe that unlawful discrimination, harassment or retaliation occurred, management shall take appropriate action to resolve the matter. If the complaint is successfully resolved, the employee will sign a letter of agreement with the Department detailing the terms of the

resolution. If the complaint is not successfully resolved, then the employee may continue the process by filing a formal grievance within **15 calendar days** of the written response from the EEO Informal Inquiry.

Advisory Note: Refer to the OSHR Policy, Section 7, EEO Informal Inquiry for Unlawful Discrimination, Harassment or Retaliation, pages 31 – 32.

INFORMAL DISCUSSION

1. The employee shall present the Informal Discussion form to his immediate supervisor or other appropriate supervisor in the covered person's chain of command, or other appropriate personnel or agency that has jurisdiction regarding the alleged event or action that is the basis of the grievance to complete; and
2. The employee and supervisor or appropriate manager must sign and date acknowledging the informal discussion was conducted and finalized.
3. The supervisor must retain the original Informal Discussion form and provide a copy of the Informal Discussion form to the Employee Relations Representative and the employee.

Advisory Note: Refer to the OSHR Policy, Section 7, Informal Discussion, pages 32 – 33.

FORMAL INTERNAL GRIEVANCE PROCESS

Step 1 – Mediation

The Mediation/Hearing Coordinator, hereinafter referred to MHC, shall:

1. Upon receipt of grievance, forward the grievance to Employee Relations Manager for his review.
2. Review the grievance.
3. Contact the grievant by e-mail or telephone after the Employee Relations Manager and MHC have discussed the grievance, and within **3 business days** of the filing of the grievance to acknowledge receipt of the grievance.
4. Notify the director of the division or unit from which the grievance arises within **3 business days** of the filing of the grievance and request that he or she designate a management representative to serve as the respondent for the mediation. The person selected to serve as the respondent must have the authority to negotiate an agreement on behalf of the NCDOT.
5. Submit a request to OSHR to assign mediators to facilitate the Step 1 Mediation upon receipt of the name of the respondent within **3 business days** of the filing of the grievance. OSHR shall assign mediators to facilitate the mediation and notify the MHC of the names and contact information of the mediators within **3 business days** of the date the mediator request was submitted by the MHC. Mediators will provide the MHC with 2 or 3 dates to schedule the mediation.
6. Identify an appropriate location to hold the mediation, which will be convenient for all parties, and tentatively reserve the room(s) for the dates provided by the mediators.
7. Discuss the mediation process with the grievant and the respondent and answer any questions they may have as well as provide both parties with documents and any other materials that may be helpful in preparing for the mediation. The respondent will also receive a Step 2 filing form which will be provided to the grievant in the event an agreement is not reached.
8. Contact the respondent to confirm one of the dates provided and schedule the mediation.
9. Contact the mediators, the grievant and the respondent to confirm the date, time and location of the facility where the mediation will be held. The MHC will include special instructions, if any, regarding the facility as well as the name and number of a contact at the facility.
10. Contact an attorney assigned to NCDOT or DMV, depending upon which the division or unit the grievance arises, to be available by telephone the day of the scheduled mediation to answer any legal

questions the respondent may have, and be available for the respondent for any legal questions that may arise prior to the mediation.

11. Provide the name of the attorney to the respondent who will serve as respondent's contact prior to, and during, the mediation should legal questions arise.
12. The respondent will be advised that the ER Manager or the MHC will be available by telephone the day of the scheduled mediation should any HR related questions arise.

If for any reason the grievant or respondent is unable to attend the mediation as scheduled, they should contact the MHC as soon as possible prior to the mediation. An unexcused failure of the grievant to attend mediation as scheduled means that the grievant forfeits the right to proceed with the internal grievance process.

Post Mediation

When a mediation agreement is reached between the grievant and respondent the MHC shall:

1. Review the Mediation Agreement to ensure the terms of the agreement are in compliance with NC Human Resources Commission policies or rules and applicable state and federal laws.
2. Forward the original signed agreement to the Employee Relations Manager for review and concurrence.
3. Forward the original signed agreement to the NCDOT Human Resources Director for final review, approval and signature.

When an agreement is not reached (impasse), the following shall occur:

1. If mediation does not result in a resolution at Step 1-Mediation, the grievant is entitled to proceed to a Step 2-Hearing. The grievant and respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
2. The respondent will provide the grievant with the Step 2 filing form, which outlines the next steps in the grievance process.
3. The grievant must complete sections 1 and 2 of the Step 2 filing form, acknowledging receipt of the Step 2 appeal rights.
4. The original signed Notice of Impasse is provided to the MHC. The MHC shall notify the Employee Relations Manager of the Notice of Impasse. A copy of the signed Notice of Impasse is provided to the grievant, the respondent and the OSHR Mediation Director. The grievant will receive a copy of the signed Step 2 filing form.
5. The respondent will forward a copy of the Notice of Impasse, the signed Step 2 filing form and any other documents related to the mediation to the MHC upon his or her return to the office.

If the grievant decides to appeal to Step 2 of the grievance process, his or her Step 2 filing form must be received by NCDOT HR Services, MHC, within 5 calendar days following an impasse in mediation. The MHC shall notify the Employee Relations Manager if the grievant files or does not file a Step 2 filing form. If the Step 2 filing form is not received within the required timeframe, it will not be accepted, and the grievant forfeits the right to proceed with the internal grievance process.

Advisory Note: Refer to the OSHR Policy, Section 7, Formal Internal Grievance, Mediation Step 1, pages 34 – 38.

Step 2 – Hearing

The Step 2- Hearing affords the grievant the opportunity to present the grievance orally to a Hearing Panel.

The Hearing Panel consists of a Chairperson and 2 other voting members, and 2 alternate panel members. The panel members may not be from Human Resources or of the same division or unit as the grievant. Panel member appointments and alternate panel members shall be employees within the same job family as the grievant, but no

more than a 3 pay grade or 2 band level differences between the grievant and the employee. Exceptions to the guidelines for appointment of a panel member in the same job family are:

- The grievant's occupational classification is unique and without a comparable position; or
- The employee has prior knowledge of the event or action giving rise to the grievance.

Alternate panel members serve in the event a panel member cannot serve due to occurrences that are unavoidable or beyond his or her control.

The names of 2 of the proposed panel members and 2 alternate panel members will be submitted to the grievant and management's representative prior to the date of the scheduled hearing. The name of the Chairperson will not be provided to either the grievant or management's representative.

In order to challenge a panel member's ability to render an impartial recommendation, due to a real or perceived conflict of interest, a written request from the grievant explaining the reason for the challenge must be submitted to, and received by, the MHC at least 2 **calendar days** prior to the scheduled date of the hearing. Upon receipt of the written request, the MHC and Employee Relations Manager will review the basis of the challenge, and if necessary, will replace the Hearing Panel member as appropriate. If replacement of an Hearing Panel member is warranted, all parties will be notified of the replacement no later than 1 **calendar day** prior to the scheduled hearing. The grievant has the right to substitute up to 2 panel members with the alternate panel member(s).

Witnesses

The grievant and management's representative may call up to 5 witnesses each to testify on his or her behalf and must provide the MHC a list of their witnesses' names and contact information no later than **10 calendar days** prior to the date of the scheduled hearing. The grievant and management's representative are each considered one of their five witnesses. Additional witnesses may be approved for either party; however, a written request must be submitted to the MHC for review and approval or disapproval. The written request must include the names and contact information for each additional witness along with a justification as to why the additional witness is needed. This information must be submitted to the MHC, as requested, prior to the date of the scheduled hearing. If either party requests additional witnesses, the MHC will review the request, approve or disapprove the request, and notify the appropriate party of the determination prior to the date of the scheduled hearing.

It is mandatory that all witnesses who are employed by the NCDOT attend the hearing. Witnesses not employed by the department may be requested to attend the hearing; however, the NCDOT cannot require his or her attendance. Witnesses shall be limited to only those individuals who have direct and relevant knowledge of the event or occurrence that is being grieved.

Exhibits

All exhibits provided by the grievant and management's representative must be relevant to the event or action that is the basis of the grievance. Any exhibit that is not related to the hearing will not be allowed to be entered into evidence. The grievant and management's representative must provide the MHC with the exhibits he or she plans to present at the hearing, along with an explanation as to how each one will be used to support the case. This information must be submitted to the MHC, as requested, prior to the date of the scheduled hearing. Upon receipt each party's exhibits, the MHC will schedule a meeting with the Chairperson to review and discuss each exhibit to determine admissibility. The MHC will notify both parties of the ruling(s) made by the chairperson prior to the date of the scheduled hearing.

MHC Step 2 Responsibilities

The MHC shall:

1. Upon receipt of the Step-2 filing form, forward the filing form to the Employee Relations Manager for his review.
2. Review the Step-2 filing form.

3. Contact the grievant by e-mail or telephone after the Employee Relations Manager and MHC have discussed the grievance and within **3 business days** of the date the Step 2 appeal was filed to acknowledge receipt of the request.
4. Notify the director of the division or unit from which the grievance arises of receipt of the Step 2 appeal, and ask him or her who will serve as management's representative at the hearing within **3 business days** of the date the Step 2 appeal was filed.
5. Contact management's representative within **3 business days** of the filing of the Step 2 appeal and propose a date, or dates, to hold the hearing. The dates provided will fall **within 35 calendar days** of the filing of Step 2 to ensure the Step 2 process is completed in a timely manner.
6. Identify an appropriate location to hold the hearing, which will be convenient for all parties, and tentatively reserves the room(s) for the proposed date, or dates, to hold the hearing.
7. Confirm the date, time and location of the hearing with the grievant and management's representative. The MHC will include special instructions, if any, regarding the facility as well as the telephone number of the facility in the event either party may need assistance in locating the facility.
8. Discuss the hearing process with both the grievant and management's representative and answer any questions either party may have.
9. Initiate the selection of potential committee members within **3 business days** of the Step 2 filing including alternate committee members to appoint to a Hearing Panel to conduct the hearing.
10. Notify each party whose attendance is required (or requested) at least **5 calendar days** prior to the date, time, and location of the hearing.

Requests for postponement of a scheduled hearing must be submitted in writing to the MHC. Such requests may be granted only upon a showing of good cause.

Hearing Guidelines

The hearing guidelines provide the grievant and management's representative a fair opportunity to present evidence on the issues to be heard and to question witnesses. The following information regarding the hearing is below:

- The Rules of Evidence shall not apply;
- Witnesses shall not be sworn;
- The hearing shall be recorded only by the MHC for the purpose to review testimony and if necessary, to assist the Secretary or designee in making a final decision;
- The grievant may obtain a copy of the recording by providing the MHC with the necessary number of digital media required to copy the recording;
- Management's representative has the burden of proof in demotion, dismissal, suspension without pay and non-disciplinary separation due to unavailability actions;
- In all other cases, the burden of proof rests with the grievant;
- The party with the burden of proof shall present his or her case first;
- Both grievant and management representative's case should begin with his or her own testimony if listed as a witness for themselves;
- After the party presenting its case has testified, or if the party presenting its case is not listed as a witness on its behalf, examination of each witness begins;
- The opposing party may cross examine each witness following his or her testimony;
- The Hearing Panel members may ask questions of each witness following the cross-examination;
- The party with the burden of proof will have the option of making a closing statement, first or last;
- The opposing party will make a closing statement; and
- Documents generated during the course of the hearing and any communications shared in connection with the hearing are confidential to the extent provided by law.

The Hearing Panel Chairperson hearing responsibilities:

- Preside over the hearing

- Call the hearing to order;
- Explain the hearing proceedings;
- Maintain order and decorum;
- Rule on all motions;
- Prescribe the order in which evidence shall be presented;
- Direct the removal of any persons disrupting the orderly conduct of the hearing;
- Request the presentation of facts pertinent to the hearing by any employee;
- Take any other action necessary to ensure a fair and impartial hearing;
- Allow the parties to present information relevant to the nature of the grievance, facts upon which the grievance is based and the remedies sought;
- Ensure all parties are allotted adequate time to present evidence and question witnesses; and
- Draft and submit to the MHC and Employee Relations Manager the committee recommendation for the final Agency decision letter (FAD).

The MHC hearing responsibilities:

- Verify all mandatory witnesses for the grievant and management's representative are present prior to the opening of the hearing;
- Monitor the hearing to ensure that all applicable policies and procedures are followed; and
- Be available to assist with the interpretation and explanation of policies and procedures as they relate to a case.

Final Agency Decision Letter (FAD)

The proposed recommendation of the Hearing Panel shall include an explanation and justification to support the recommendation. The recommendation must be submitted to the MHC. Upon receipt of the recommendation, the MHC shall discuss the recommendation with the Employee Relations Manager and submit the proposed recommendation to the Secretary or designee for review and comment. Following review by the Secretary or designee, the MHC shall forward the recommendation to Director of the Office of State Human Resources or designee for review, comment and approval in accordance with OSHR's established guidelines.

Advisory Note: Refer to the OSHR Policy, Section 7, Formal Internal Grievance, Step 2 – Hearing, pages 38 –41.

APPEAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS

If the grievant has completed the internal grievance process and is not satisfied with the Final Agency Decision, the grievant may file a petition for a contested case hearing pursuant to G.S. 150B-23 with the Office of Administrative Hearings (OAH). A fee must be paid to OAH when the petition is filed, unless it is waived by OAH. Any appeal of this action must be filed **within thirty (30) calendar days of receipt of the final agency decision letter.**

Physical Address:

Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, N.C. 27609
919-431-3000

Mailing Address:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27609

A copy of the appeal must be served by certified mail on the NCDOT's Agency's registered agent as referenced below:

Sarah Mitchell, Process Agent
N.C. Department of Transportation
1 S. Wilmington Street
1501 Mail Service Center
Raleigh, North Carolina 27699-1501